

REMARKS

The application has been amended to place the application in condition for allowance at the time of the next Official Action.

A substitute Abstract of the Disclosure is provided on an accompanying separate sheet that is less than 150 words and that is believed to address the objection to the specification noted in the Official Action.

Claims 90, 96, 98, 104 and 106 are pending in the application.

Claims 90, 96, 98, 104 and 106 were provisionally rejected under the judicially created doctrine of double patenting over claims 87-88, 91, 95, 107, 117 and 123-150 of co-pending Application No. 10/419,850.

This rejection should be withdrawn and a terminal disclaimer need not be filed for the following reason.

MPEP 804 I.B.1. provides that if a "provisional" non-statutory obviousness-type double patenting rejection is the only rejection remaining in an earlier filed of two pending applications, the examiner should withdraw that rejection and allow the earlier-filed application to issues as a patent without a terminal disclaimer.

Of course, a terminal disclaimer is required in the later filed application if the later filed application contains conflicting claims.

In the present case, the present application was filed on April 13, 1999 and co-pending application no. 10/419,850 was filed on April 22, 2003. However, the co-pending application is entitled to the filing date of its parent application (09/621,534), which was filed on July 21, 2000.

Nevertheless, the filing date of the present application precedes even the filing date of the parent of the co-pending application and thus the present application is the earlier filed application.

Accordingly, since the obviousness-type double patenting rejection is the only rejection and since the present application is the earlier filed of the two applications, the provisions of MPEP 804 I.B.1. apply and the present obviousness-type double patenting rejection should be withdrawn without a terminal disclaimer being filed.

Since the claims were indicated as allowable if a terminal disclaimer were filed, and since a terminal disclaimer need not be filed as set forth above, the application is nevertheless believed in condition for allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

YOUNG & THOMPSON



Liam McDowell, Reg. No. 44,231
745 South 23rd Street
Arlington, VA 22202
Telephone (703) 521-2297
Telefax (703) 685-0573
(703) 979-4709

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APPENDIX:

The Appendix includes the following items:

- amended Abstract of the Disclosure